# IN THE HIGH COURT OF BOMBAY AT GOA

## FIRST APPEAL NO. 206 OF 2009
## WITH
## MISC. CIVIL APPLICATION NO. 182/2015

1. Shangrilla Apartments Co-op. Housing Society Ltd., having its Office at Shangrilla Apartments, Miramar, Panaji, Goa, through its Secretary.

2. Domingos Francisco S. A. Palha,

3. Caetano Mario Fernandes.

4. Lawrence B. Fernandes,

All residing at Shangrila Apartments, Miramar, Panaji,Goa. ….... Appellants.

Versus

1 M/s. Rivin Builders, Proprietory concern of Ronald Mascarenhas, with Office 13, Lake View Colony, Miramar, Panaji, Goa.

2. Mrs. Lia Pereira,

3. Mr. Rozendo G. D'Souza, both residing at Flat A-1, Shangrilla Apartments, Miramar, Panaji, Goa

4. Mrs. Agnel Pereira,
residing at Bondir, Santa Cruz, Ilhas, Goa.

5. Casimiro S.A. Correia,

Residing at Bondir, Santa Cruz, Ilhas, Goa.

6. Anthony S. Dennis, Flat No.B-8, Shangrila Apartments, Miramar, Panaji, Goa.

7. Mrs. Meena Menezes, Shop No.C-2 and C/2-A, Shangrila Apartments, Miramar, Panaji, Goa. ….. Respondents.

Mr. M. B. De Costa, Senior Advocate with Shri J. A. Lobo and Ms. S. Chodankar, Advocates for the appellants.

Mr. A. F. Diniz, Advocate for the respondents No.1,

Mr. V. R. Tamba, Advocate for the respondents No.2 to 5.

**CORAM :- F.M. REIS &**
**K.L. WADANE, JJ.**

**Date : - 08/07/2015.**

**ORAL JUDGMENT** : (PER F.M. REIS, J.)

Heard Mr. M. B. da Costa, learned Senior Counsel appearing for the appellants, Mr. A.F. Diniz, learned Counsel appearing for respondent No.1 and Mr. V.R. Tamba, learned Counsel appearing for the respondent No.2 to 5.

2. The above appeal, *inter alia,* challenges the Judgment and Decree passed by the learned Civil Judge, Senior Division, at Panaji, in Special Civil Suit No.130/2000 dated 7th July, 2009 whereby the suit filed by the appellants came to be dismissed. During the pendency of the appeal, the appellants filed an application under Order 41, Rule 27 of the Code of Civil Procedure to produce three documents, inter alia, consisting of correspondence with the Registrar of Co-operative Societies and the confirmation of the members of the appellant-Society. The learned Counsel appearing for the respondents points out that in case this Court allows production of the said documents, evidence would have to be recorded to examine the veracity of such documents as, according to the learned Counsel appearing for the respondents, they wish to produce documents rebutting the contents thereof. Considering that the documents are from the records of a public office and prima facie authenticity thereof cannot be disputed and appear to be relevant to decide the matter under controversy, we find it appropriate to grant leave to the appellants under Order 41, Rule 27 of the CPC to rely upon such documents. No doubt, such documents would have to be produced in evidence after examining the appellant and giving an opportunity to the respondents to rebut such evidence, if

so advised. Subject to the above, the application filed by the appellants under Order 41, Rule 27 of the CPC is allowed.

3. Mr. M.B. da Costa, learned Senior Counsel appearing for the appellants has also advanced elaborate arguments on merits of the dispute in the present suit. The main grievance of the appellants is that though the appellants No.2 to 4 are occupying individual apartments in the building located in the subject-property, the conveyance of the property has not been executed in favour of the appellant-Society, by the respondents. The learned Senior Counsel further points out that the learned Trial Judge, whilst passing the impugned Judgment, has erroneously taken a view that the registration of the Society has not been produced and that the requirements as contemplated in the agreement have not been satisfied by the appellants to be entitle for the reliefs sought in the suit. The learned Senior Counsel has minutely taken us through the evidence, as well as the material on record to point out that the learned Trial Judge, by the impugned Judgment, has erroneously refused to grant the reliefs sought in the suit. We have not elaborately recorded all the other submissions of the learned Senior Counsel, on merits, taking note of the view that we propose to take

while deciding the present appeal.

4. On the other hand, Shri A. F. Diniz, learned Counsel appearing for the respondent No.1, submits that as far as respondent No.2 is concerned, it is not disputed that the property has to be conveyed in favour of the Society, but, according to him, in view of the objections raised by the respondent No.1, who is the owner of the property, such an exercise could not be completed till this date.

5. Mr. V. R. Tamba, learned Counsel appearing for the respondents No.2 to 5, however, submits that there is no privity of contract between the appellants and the respondent no.1, so as to get the relief as prayed for in the suit as against the respondent No.1, but, however, both the learned Counsel have raised the objection that the suit itself is barred by limitation and consequently, the question of examining the grievances of the appellants, on merits, would not arise. As such, we permitted the learned Counsel to address us on the question of limitation.

6. Mr. Tamba, learned Counsel appearing for the respondents

No.2 to 5 has submitted that there was a notice served on the respondent No.1 on 24/4/1995, calling upon the respondents No.1 and 2 to execute the sale deed in favour of the appellants. The learned Counsel further points out that the suit came to be filed by the appellants on 21.12.2000 which is hopelessly barred by limitation. The learned Counsel further submits that in terms of Article 54 of the Limitation Act, such a suit has to be filed from the date the defendants show disinclination to perform their part of the contract. The learned Counsel, as such, submits that as the notice was issued in the year 1995 and the respondents have failed to execute the sale deed, the suit filed in the year 2000 is hopelessly barred by limitation.

7. Mr. A. F. Diniz, learned Counsel appearing for the respondent No.1 has also supported the contention of Mr. Tamba, learned Counsel appearing for the respondents No.2 to 5. Mr. Diniz, however, points out that though the appellants had filed Complaint No.24/1995 on 26/5/1995 before the Goa State Consumer Disputes Redressal Commission, ("State Commission" for short) and such proceedings came to be disposed of by an order dated 9th March, 1999, this period cannot be excluded for the purpose of computing the

period of limitation. The learned Counsel further submits that the proceedings from the State Commission are not civil proceedings nor the State Commission is a Court and, consequently, the question of exclusion of the period under Section 14 of the Limitation Act, 1963 does not arise at all. The learned Counsel, as such, submits that the suit itself is barred by limitation.

8. On the other hand, Mr. M. B. Da Costa, learned Senior Counsel appearing for the appellants has submitted that as far as the respondent No.1 is concerned, there was no reply filed by the respondent No.1 to the said notice dated 24/4/1995 showing any disinclination of the execution of the sale deed. The learned Senior Counsel further submits that immediately, thereafter, Complaint No.24/1995 was filed before the State Commission and ultimately, the said complaint came to be disposed of by an order dated 9$^{th}$ March, 1999, granting leave to the appellants to file civil proceedings to claim their reliefs. The learned Senior Counsel further points out that immediately, thereafter, on 21$^{st}$ December, 2000, the appellants filed the suit, bearing Special Civil Suit No.130/2000 and consequently, the period spent in the proceedings before the State Commission have to

be excluded in terms of Section 14 of the Limitation Act, 1963. The learned Senior Counsel further submits that the State Commission is a Court and in support of his submissions, the learned Senior Counsel has relied upon the Judgments of the Apex Court reported in (2011) 10 SCC 316 in the case of ***Trans Mediterranean Airways vs. Universal Exports and another*** and (2000) 5 SCC 355 in the case of ***P. Sarathy vs. State Bank of India.***

9**.** Upon hearing the learned Counsel appearing for the respective parties, the following points for determination arise in the present appeal :

(1) Whether the suit filed by the appellants is barred by limitation ?

(2) Whether the learned Trial Judge was justified to pass the impugned Judgment, refusing the relief to the appellants to direct the respondents to convey the disputed property in favour of the appellants ?

10. Before we examine the contentions of the learned Counsel appearing for the respondents that the suit is barred by limitation, we would record the undisputed facts of the present case as reflected in

the records placed before us. Initially, notice calling upon the respondent No.1 to execute the sale deed was issued on 24th April, 1995 and the respondent No.1 did not raise any objection nor send any reply to establish any disinclination in executing the sale deed. The respondent No.2, however, sent reply only showing willingness to cooperate in the execution of the sale deed and contending that the respondent No.1 was raising a dispute to execute such a sale deed. The appellants, thereafter, filed a complaint No. 24/1995, before the State Commission. All the respondents were parties to the said proceedings before the State Commission. The complaint came to be disposed of by an order dated 9th March, 1999. On perusal of the said order, we find that the State Commission, in fact, granted leave to the appellants to pursue their claim by filing a civil suit. Immediately, thereafter, on 21st December, 2000, the appellants filed the suit, inter alia, seeking the relief of specific performance and directions to the respondents to convey the subject-property. In such circumstances, in case the time spent in pursuing the complaint before the State Commission is excluded, the suit is not barred by limitation is not disputed by the respondents.

11. As such, the only aspect to be examined is whether the time spent before the Consumer Forum can be excluded in terms of Section 14 of the Limitation Act, 1963. In this connection, it would also be appropriate to note that the fact that the proceedings were initiated bonafide and that the respondents were also parties to such proceedings and defending their claim, is also undisputed. In this connection, a Division Bench of this Court in a Judgment reported in AIR 2001 BOMBAY 327 in the case of ***M/s. Deokar Exports Pvt. Ltd., vs. new India Assurance Co. Ltd.,*** has taken a view that the time taken in pursuing a complaint before the Consumer Forum is to be excluded in terms of Section 14 of the Limitation Act, by observing at para 10, thus:

> "10. We may note that on 10-2-1990, fire broke out and the machinery was damaged. The respondent was immediately informed orally by the appellant. However, the respondent was informed in writing on 17-2-1990. Correspondence followed between the "parties. The respondent declined to pay the claim of the appellant on 18-4-1990. The appellant approached the said NCDRC on 20-8-1991. The same was decided by the said forum on 23-9-1992. It came to be rejected on the ground that considering

the contention of the respondent there was no deficiency in service. Therefore, it has no jurisdiction and appellant can avail of any other remedy available. Article 44(b) of the Limitation Act, 1963 provides three years limitation from the date of occurrence causing loss or where the claim on the policy is denied the date of such denial. Section 14 deals with exclusion of time of proceeding bona fide in Court without jurisdiction. Section 14(1) is as under :--

> "14. Exclusion of time of proceeding bona fide in Court without jurisdiction.-- (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it."

Considering the above position, it cannot be accepted that the resort by the appellant to the said forum of NCDRC was not in good faith or bona fide or it was deliberately chosen knowing full well that it was incompetent to deal with it. The order passed by the said Forum shows that the appellant has approached the said Forum bona fide and hence the respondent was permitted to avail of any other remedy available. At the most, it may be said that the further steps by the appellant of going before the Apex Court by filing S.L.P, was not in good faith. However, in view of Section 14(1) of the Limitation Act, the appellant is entitled for exclusion of the period from 20th August, 1991 to 30-9-1992. The learned counsel for the respondent has rightly relied upon the judgment in the matter of Saushish Diamonds Ltd. v. National Insurance Co. Ltd. MANU/SC/1175/1998 : (1998)8SCC357 . In the said case, precisely the same position concurred. The appellant had approached the National Commission for Consumer Redressal. The said Commission in its order held that the Insurance Company has repudiated the claim. Hence, the relief cannot be granted by it. This order came to be challenged before the Apex Court. It was observed as under :--

> "..... Under these circumstances, the Commission rightly relegated the parties to a civil action. It is true that limitation has run out against the appellant during the pendency of the proceedings. Therefore, the time taken between

the date of the filing of the claim before the Commission and the date of its disposal, namely, 28-9-1995 would be considered by the Civil Court for exclusion under Section 14 of the Limitation Act, 1963."

In view of the above position, we hold that the suit filed by the appellant was within limitation."

The Karnataka High Court, in the Judgment reported in ILR 2004 KAR 4322, SCC Online Karnataka 121 in the case of ***The City Municipal Council vs. M/s. S.A. Lateef & Co. Andhra Pradesh,*** has also taken a similar view that the period taken in pursuing remedy under the Consumer Protection Act can be excluded in terms of Section 14 of the Limitation Act by observing thus :

"LIMITATION ACT, 1963 (CENTRAL ACT NO. 36 OF 1963) – SECTION 14-Exclusion of time of proceedings 'Bonafide' in Court without jurisdiction – Computing the period of limitation – Prosecuting with due diligence in another Civil Proceeding in good faith under Consumer Protection Act. The plaintiff had filed a complaint before District Consumer Forum for recovery of unpaid price. The complaint was allowed and defendant was directed to pay the amount. In the appeal, the State Commission by its order dated 16.1.1996, held that the subject matter of dispute is not governed by Consumer Protection Act and gave liberty to the plaintiff to approach Civil Court; Accordingly suit is filed. HELD – Provisions of Section 14 declare that bonafidely and with due diligence if a person is prosecuting any Civil Proceedings, in any other Court which has no competent jurisdiction, the period spent in that litigation is to be deducted. The District Consumer Forum is very much a Court of Civil jurisdiction and the proceedings before the Consumer Forum are Civil Proceedings. Merely by the fact that State Forum has held that the complaint is not maintainable and that the plaintiff is not a consumer within the definition, is not a ground by itself to infer that there was lack of diligence or bonafides on the part of the plaintiff. The plaintiff was assisted by the Counsel. The District Forum entertained the complaint and granted a decree. The limitation for filing the suit in the normal course was 22.3.96. The complaint before the Forum was filed on 7.1.95 and proceedings under Consumer Protection Act finally terminated on 9.1.97. About 2 years and 8 months is spent in litigation before Consumer Forum. If the said period is deducted, the present suit filed on 12.1.98 is well within the limitation. Therefore, the grant of benefit of Section 14 of Limitation Act by Trial Court is sound and proper."

In AIR 1995 SC 1428, in the case of ***Laxmi Engineering Works vs. P.S.G. Industrial Institute,*** the Apex Court has observed, inter alia, at para 26 that in case the appellant chooses to file a suit, the period taken in pursuing the complaint under the Consumer Protection Act is to be excluded in terms of Section 14 of the Limitation Act. A similar view has also been taken by the Apex Court in the Judgment reported in (1998) 8 SCC 357 in the case of ***Saushish Diamonds Ltd. vs. National Insurance Co. Ltd..***

12. Taking note of the observations of the Division Bench of this Court and of the Apex Court referred to hereinabove, the fact that time taken to pursue a complaint under the Consumer Protection Act can be excluded in terms of Section 14 of the Limitation Act, 1963 is no longer *res integra* and, as such, the contention of Mr. Tamba, learned Counsel appearing for the respondents No.2 to 5 that such time cannot be excluded, cannot be accepted. In such circumstances, the fact that the proceedings were bonafide are apparent in the context that the proceedings were diligently pursued by the appellants before the State Commission and, in fact, on perusal of the Judgment of the

learned State Commission, it is clearly held that the appellants were granted leave to pursue their claim by filing a civil suit. As such, the suit filed by the appellant is within the period of limitation in terms of Article 54 of the Limitation Act, 1963. The first point for determination is answered accordingly.

13. With regard to the second point for determination, the contention of Shri M. B. da Costa, learned Senior Counsel appearing for the appellants is that the merits of the dispute would have to be considered in the context of the documents sought to be produced by the appellants under Order 41, Rule 27 of the CPC. As already pointed out herein above, leave to produce the said documents has been granted subject to the respondents leading rebuttal evidence, if they so desire. In such circumstances, witnesses would have to be examined to produce such documents and liberty would have to be given to the respondents, to cross examine such witnesses, if they so desire. As such, we find it appropriate, as far as second point for determination is concerned, to quash and set aside the impugned Judgment and Decree of the learned Trial Judge and remand the matter to the learned Trial Judge to decide the suit filed by the appellants, afresh, in the light of

the above observations.

14. In view of the above, we pass the following :

(I) The impugned Judgment and Decree dated 7th July, 2009 passed by the learned Civil Judge, Senior Division, "B" Court, Panaji, in Special Civil Suit No.130/2000 is quashed and set aside.

(II) Special Civil Suit No.130/2000 is restored to the file of the learned Civil Judge, Senior Division, "B" Court, Panaji is directed to decide the suit afresh in the light of the observations made herein above, after hearing the parties, in accordance with law.

(III) The appeal stands disposed of accordingly, with no order as to costs.

(IV) The parties are directed to appear before the learned Trial Judge on 17th August, 2015, at 10.00 a.m.

In view of the disposal of the First Appeal, the civil application stands disposed of accordingly.

**K.L. WADANE, J.** **F.M. REIS, J.**

ssm.